

GUILTY PLEA COLLOQUY

Chief Judge James P. Jones

Current as of August 20, 2008

1. *Have Clerk call case.*
2. *To defense counsel:* Do I understand that the defendant wishes to enter a guilty plea pursuant to a written plea agreement?
3. *Ask defense counsel and defendant to stand before the bench.*
4. Before accepting your guilty plea, there are a number of questions I will ask you to assure that it is a valid plea. If you do not understand any of the questions, please say so since it is important that you fully understand my questions.
5. *Ask the Clerk to administer oath to defendant.*
6. Do you understand that you are now under oath, and if you do not answer my questions truthfully, your answers may later be used against you in another prosecution for perjury or making false statements?
7. How old are you? How far did you go in school? Can you read and write English? What jobs or occupations have you followed?
8. Have you ever been treated for mental illness or substance abuse of any type?
9. Have you taken any drugs, medicine or pills within the last 24 hours?

Are you presently under the influence of alcohol?

10. What is the present state of your health today?

11. To defense counsel: Do you have any doubt as to the defendant's competence to plead at this time?

12. Have you received a copy of the indictment—that is, the written charges against you in this case? Have you had an adequate opportunity to discuss the indictment and your case in general with your attorney?

13. *Show defendant signed plea agreement.* Did you sign this agreement and initial each page to show that you read it?

14. Did you have an adequate opportunity to read and discuss the plea agreement with your lawyer before you signed it?

15. Are you fully satisfied with your attorney's representation?

16. *Ask the AUSA to summarize the terms of the plea agreement.*

17. Are those terms included in the plea agreement, as you understand it?

18. [Do you understand that under the plea agreement you waive or give up your right to appeal any sentence or to collaterally attack the sentence?]

19. Has anyone made any promise to you other than those made in the plea agreement that caused you to want to plead guilty?

20. Has anyone attempted in any way to force you to plead guilty in this

case?

21. Do you understand that the charge to which you are pleading guilty is a felony and that if your plea is accepted, you will be found guilty of that charge; that this may deprive you of valuable civil rights, such as the right to vote, to serve on a jury, to hold public office, and to possess any kind of firearm?

22. The maximum possible penalty for the offense is an imprisonment for _____ years plus a fine of up to \$ _____ plus a special assessment of \$100 per count? [There is a mandatory minimum sentence of _____.] In addition, there will a period of supervised release after imprisonment of up to _____ years. Supervised release does not reduce the stated term of imprisonment, but rather is a term of supervision in addition to, and following, the term of imprisonment. If there is a violation of a condition of supervised release, the court may impose an additional prison term, regardless of how much time was served before the violation of the condition. In addition, there may be a further term of supervised release following imprisonment. Do you understand?

[The court may also order, or be required to order, you to make restitution to any victim of your offenses. Do you understand?]

[The court may require you to forfeit certain property to the government. Do you understand?]

[Since the offense involved fraud, the court may require you to give notice of the conviction to victims of the offense. Do you understand?]

23. Do you understand the possible consequences of your plea?

24. A. Do you understand that while the U.S. Sentencing Guidelines are not binding, the judge must consider those guidelines, as well as other factors, in fixing your sentence?

B. Do you understand that under these sentencing guidelines there will be a range of imprisonment and fine in your case, but that it will not be determined until after a presentence report has been completed and a sentencing hearing held?

C. Do you also understand that the judge has the authority to impose a sentence that is more severe or less severe than the sentencing range called for by the guidelines?

D. Do you also understand that under some circumstances [you or] the government may have the right to appeal your sentence?

E. Do you also understand that parole has been abolished, and that if you are sentenced to prison you will serve your full term less any good time credit earned?

[F. Do you understand that you will not be eligible for probation,

since the offense carries a maximum sentence of 25 years or more?]

G. Do you understand that your sentence may be different from any estimate your attorney may have given you?

25. Do you understand that if I do not accept any recommendation or stipulation concerning your sentence as set forth in your plea agreement, you will still be bound by your plea of guilty and will have no right to withdraw it?

26. Please listen carefully to these rights that are given up when you plead guilty:

A. You have a right to plead not guilty to any offense charged against you, and to persist in that plea; that you would then have the right to a trial by jury, that at trial you would be presumed to be innocent and the government would have to prove your guilt beyond a reasonable doubt; that you would also have the right to be represented by a lawyer at trial and at every other stage of the proceeding, and if necessary have the court appoint a lawyer, the right to see and hear all witnesses and have them cross-examined in your defense, the right on your part to decline to testify unless you voluntarily elected to do so in your own defense, and the right to compel the attendance of witnesses to testify for you. Should you decide not to testify or put on any evidence, that could not be used against you. Do you understand all of these rights?

B. Do you further understand that by entering a plea of guilty, if that plea is accepted by the court, there will be no trial and you will have waived or given up your right to a trial as well as those other rights associated with a trial as I have just described?

27. *Read the charge(s) to which the defendant is pleading guilty and explain elements.*

28. Please tell me in your own words what you did that makes you guilty.

29. *To government counsel:* Please make a representation or put on evidence concerning the facts the government would be prepared to prove at trial.

30. *To defendant:* Do you contest any of the facts just presented?

31. Before I ask you to enter your plea, do you have any questions of me?
Do you wish to talk further with your lawyer?

32. How do you now plead to the charge(s) contained in count(s) _____, guilty or not guilty?

33. It is the finding of the court in the case of U. S. v. _____ that the defendant is fully competent and capable of entering an informed plea, that the defendant is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact as to each of the essential elements of the offense. The plea is therefore

accepted and the defendant is now adjudged guilty of that offense.

34. *Inform the defendant:*

A. A written presentence report will be prepared by the probation office to assist me in sentencing;

B. You will be asked to give information for the report and your attorney may be present if you wish;

C. You and your attorney have the right to read the presentence report and file objections to the report;

D. I remind counsel that written objections to the presentence report must be made within 14 days after receiving the report.

[E. Since the plea agreement involves the dismissal of certain charges [an agreement not to pursue other charges], I will accept the plea, but defer acceptance of the plea agreement until after the presentence report has been prepared.]

35. *Set date for sentencing.*

36. *Determine possible release.*

37. *To defendant:* You are required to appear for sentencing on _____ at _____. Failure to appear as required is a criminal offense for which you can be sentence to imprisonment, and the penalties of violating any of the conditions of

release can be severe.

38. Adjourn.